## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FLEX FRAC LOGISTICS, LLC AND SILVER EAGLE LOGISTICS, LLC, JOINT EMPLOYERS Respondent

and

Case No. 16-CA-27978

KATHY LOPEZ

An Individual

COUNSEL FOR THE ACTING GENERAL COUNSEL'S

CROSS-EXCEPTIONS

TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Becky Mata Counsel for the Acting General Counsel National Labor Relations Board Region 16, Fort Worth Regional Office 819 Taylor St, Suite A24 Fort Worth, Texas 76102

Dated: March 19, 2012

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### Respondent

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# COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE AMINISTRATIVE LAW JUDGE

**COMES NOW** Counsel for the Acting General Counsel, pursuant to Section 102.46(e) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, and files the following Cross-Exceptions to the February 12, 2012 Decision of the Administrative Law Judge in this case.

General Counsel excepts to the following:

1. To the administrative law judge's failure in her conclusions of law to find determinative that Respondent discharged Lopez based on her discussion of wages the evidence that: "in [Controller Susie Kellum's,] mind, this [termination rationale] would also include wages. Because she knew that Lopez had discussed wages in the accounting department and because she personally didn't think that wages should be discussed, she added both reasons to the termination notice." (JD slip op. at 10, LL. 25-27).

- 2. To the administrative law judge's finding of fact that employee Frank Gay merely "opined" that he did not believe that he should disclose the various drivers' pay when he worked in dispatch . . ." (JD slip op. at 9, LL. 2-30)
- 3. To the administrative law judge's finding that "Respondent terminated Lopez . . . . not because of any discussions that Lopez may have had about accounting employees' wages or for any other discussions about wages."

  (JD slip op. at 10, LL. 27-29).
- 4. To the administrative law judge's finding that "although I have not found that Respondent terminated Lopez because she discussed wages with other employees . . . ." (JD slip op. at 12, LL. 15-16).
- 5. To the administrative law judge's finding that Lopez was not terminated because she discussed wages or was engaged in other protected concerted activity. (JD slip op. at 12, LL. 18-20).
- 6. To the administrative law judge's finding that "despite the fact that the rule may not have been enforced because Lopez discussed wages with other employees . . . ." (JD slip op. at 12, LL. 24-25)
- 7. To the administrative law judge's Conclusion of Law 3 that Respondent did not violate the Act in any other manner and omits a finding that Lopez was terminated for the perception of discussing wages. (JD slip op. at 12, L. 42).

Dated at Fort Worth, Texas, this 19th day of March 2012.

### Respectfully submitted,

Becky Mata Counsel for the Acting General Counsel National Labor Relations Board, Region 16 819 Taylor Street, Room 8A24 Fort Worth, Texas 76102

#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing Counsel for the Acting General Counsel's Answering Brief to Respondent's Exceptions has been served this 19<sup>th</sup> day of March 2012, upon each of the following:

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